COMPETING VERDICT FORMS

Document 77

Filed 09/24/24 Page 1 of 25 Page ID

Casel5:23-cv-00515-HDV-JPR

TO THIS HONORABLE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

By and through their attorneys of record in this action, Plaintiff Edgar Solis and Defendants State of California and Michael Bell hereby submit the following Competing Verdict Forms as follows:

Attachment	Title	Page
A	Plaintiff's Proposed Verdict Form	2
В	Defendants' Proposed Verdict Form	8
C	Redline Verdict Form of Disputed Language	15
D	Plaintiff's Position	22
E	Defendants' Position	24

Plaintiff reserves the right to amend this and any other [Proposed] Special Verdict Form, subject to any objections, motions *in limine*, and applicable Orders of the Court.

Respectfully Submitted,

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DATED: September 24, 2024 LAW OFFICES OF DALE K. GALIPO LAW OFFICES OF GRECH & PACKER

By: /s/ Marcel F. Sincich
Dale K. Galipo
Marcel F. Sincich
Trent C. Packer

Attorney for Plaintiff

DATED: September 24, 2024 ROB BONTA

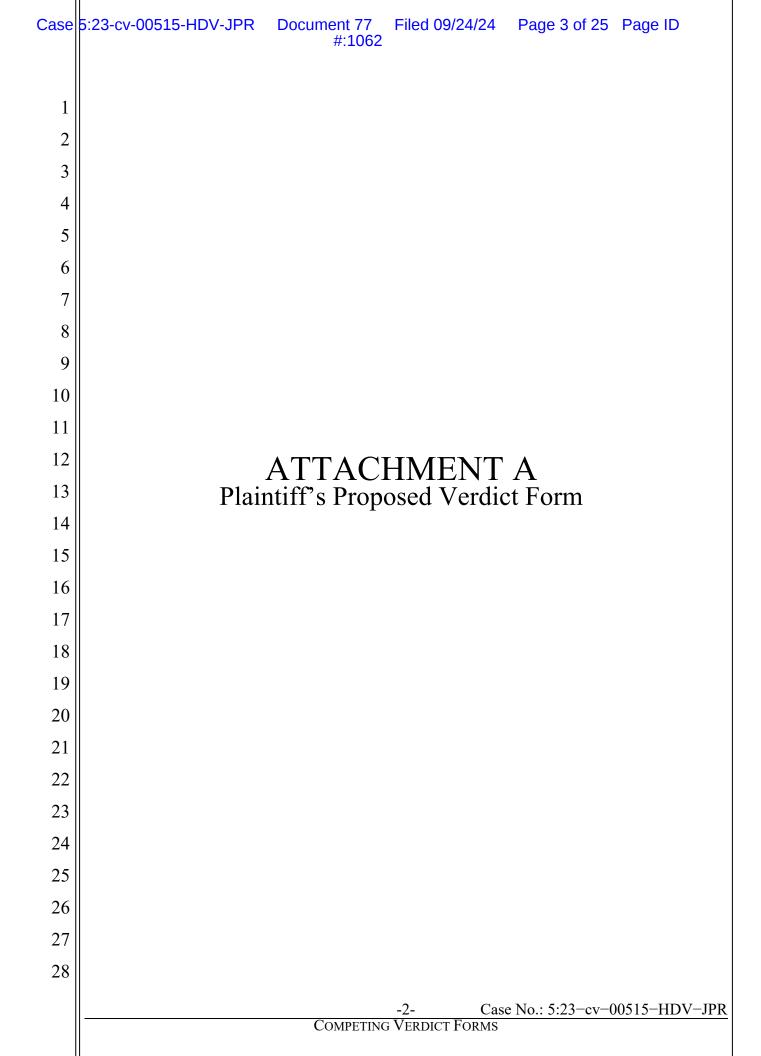
Attorney General of California RHONDA L. MALLORY Supervising Deputy Attorney General

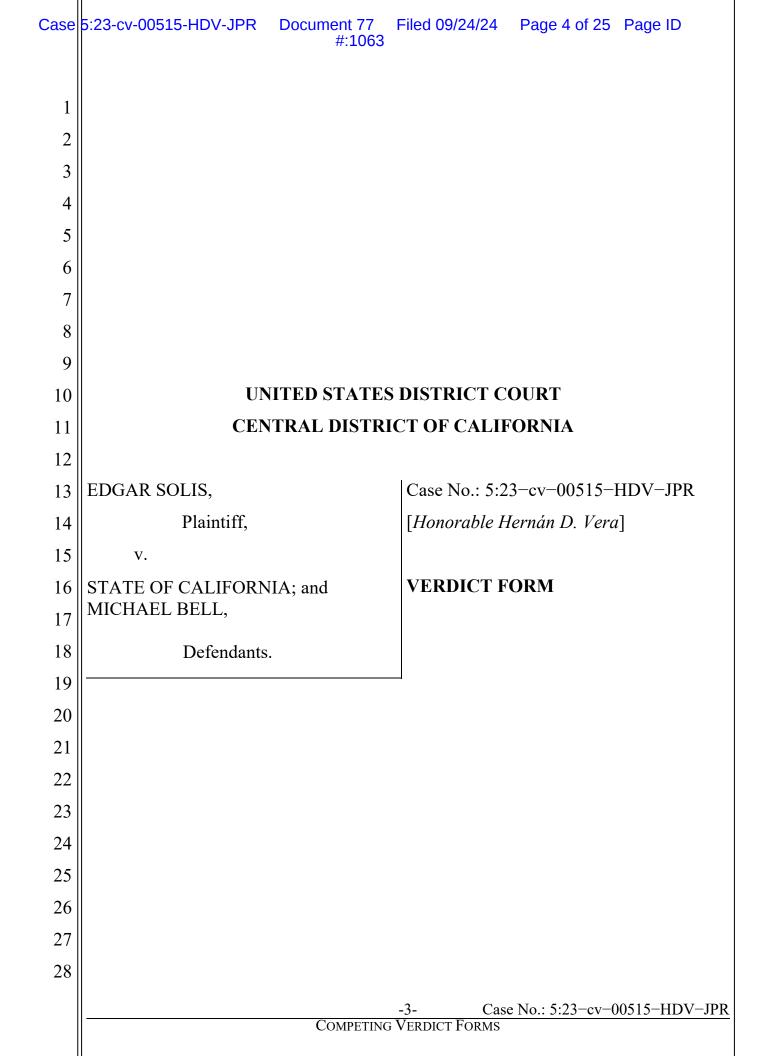
By: /s/ David Klehm
DAVID KLEHM
Deputy Attorney General

Deputy Attorney General Attorneys for Defendant State of California (by and through the California Highway Patrol) and Michael Bell

-1- Case No.: 5:23-cv-00515-HDV-JPR

COMPETING VERDICT FORMS





1	JOINT AGREED UPON VERDICT FORM
2	We, the jury in the above-entitled action, find the following:
3	
4	PART I: DEFENDANT OFFICER MICHAEL BELL LIABILITY
5	FOURTH AMENDMENT EXCESSIVE FORCE & BATTERY CLAIMS
6	Question No. 1: Did Officer Michael Bell use excessive or unreasonable force
7	against Edgar Solis?
8	
9	YES NO
10	
11	If you answered "Yes" to Question No. 1, please answer Question No. 2.
12	If you answered "No" to Question No. 1, please answer Question No. 3.
13	
14	Question No. 2: Was Officer Michael Bell's use of force a cause of injury,
15	damage, or harm to Edgar Solis?
16	
17	YES NO
18	
19	Please answer Question No. 3.
20	
21	NEGLIGENCE CLAIM
22	Question No. 3: Was Officer Michael Bell negligent in his conduct against
23	Edgar Solis?
24	VIC NO
25	YESNO
26	If you arrayand "Var" to Ougstion No. 2 places arrayan Ougstion No. 4
27 28	If you answered "Yes" to Question No. 3, please answer Question No. 4.
40	
	-4- Case No.: 5:23-cv-00515-HDV-JPR COMPETING VERDICT FORMS

Document 77

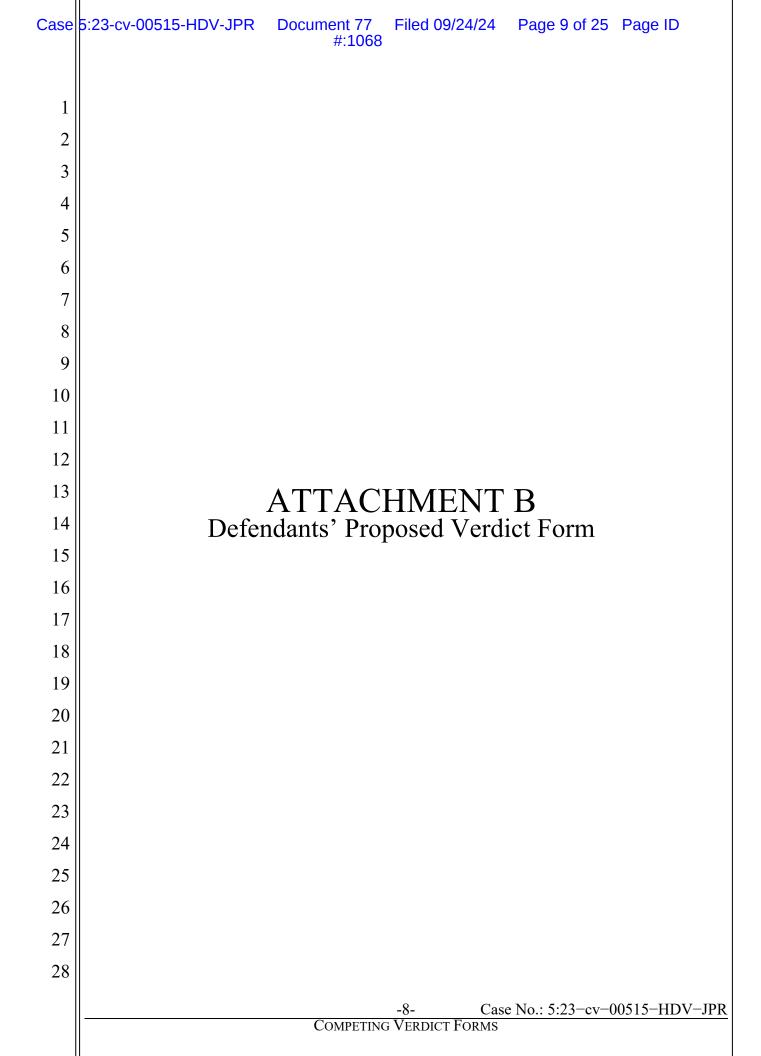
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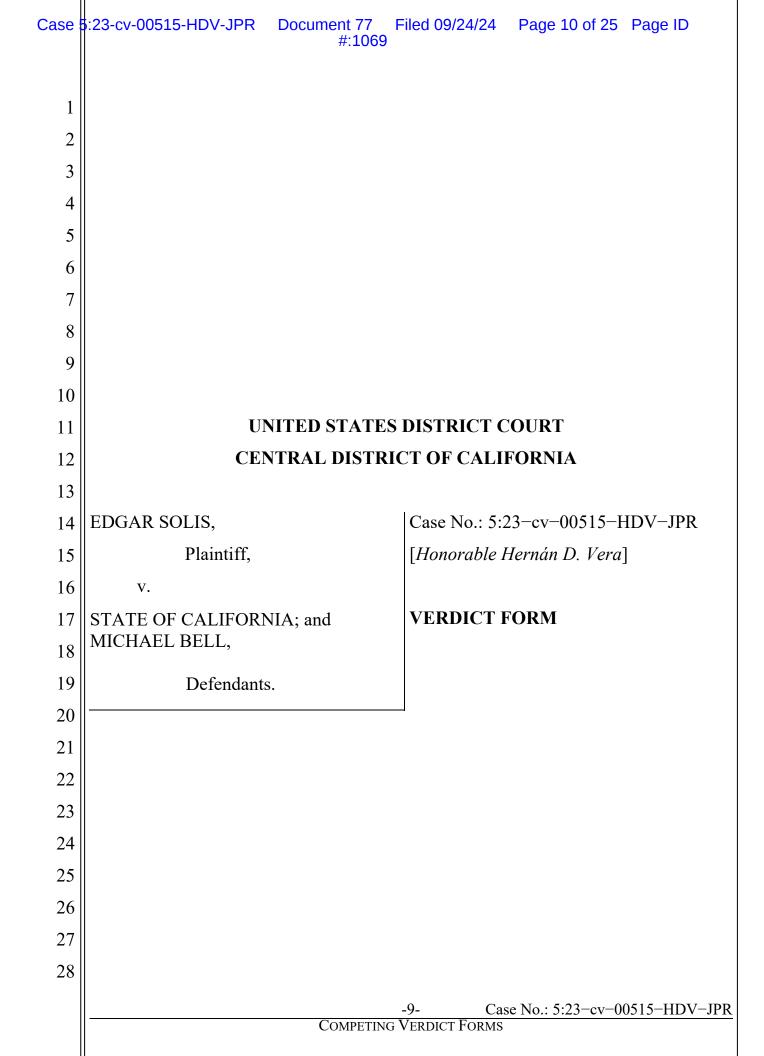
Page 6 of 25 Page ID

Case 5:23-cv-00515-HDV-JPR

1	Question No. 7: What percentage of resp	onsibility for Edgar Solis' injury or
2	harm do you assign to the negligen	at conduct, if any, of the following?
3		
4	Officer Michael Bell	
5	Edgar Solis	%
6	(Total must equ	al 100 %)
7		
8	If you answered "Yes" to Question I	No. 2, please answer Question No. 8.
9		
10	THE BANE A	ACT CLAIM
11	Question No. 8: Did Officer Michael Bel	I violate the Bane Act?
12		
13	YES	NO
14		
15	Please proceed to Part II on the next	t page and answer Question No. 9.
16		
17	PART II: PLAINTIFF ED	GAR SOLIS' DAMAGES
18	Question No. 9: What are Edgar Solis' d	amages for the following:
19		
20	Past physical pain and suffering:	\$
21		
22	Future physical pain and suffering:	\$
23		
24	Past mental pain and suffering:	\$
25		
26	Future mental pain and suffering:	\$
27		
28	Please answer Question No. 10.	
	(6- Case No.: 5:23-cv-00515-HDV-JPR
	COMPETING V	erdict Forms

1	Question No. 10: Did Officer Michael Bell act with malice, oppression, or in
2	reckless disregard of Edgar Solis' rights?
3	
4	YES NO
5	
6	
7	
8	
9	Please sign and date the verdict form and return it to the Court.
10	
11	
12	Date:
13	Jury Foreperson
14	
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	-7- Case No.: 5:23-cv-00515-HDV-JPR COMPETING VERDICT FORMS
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1	JOINT AGREED UPON VERDICT FORM
2	We, the jury in the above-entitled action, find the following:
3	
4	PART I: DEFENDANT OFFICER MICHAEL BELL LIABILITY
5	FOURTH AMENDMENT EXCESSIVE FORCE CLAIM
6	Question No. 1: Did the acts of Officer Bell deprive Edgar Solis of his rights
7	under the United States Constitution prohibiting an unreasonable
8	seizure?
9	
10	YESNO
11	
12	If you answered "Yes" to Question No. 1, please answer Question No. 2.
13	If you answered "No" to Question No. 1, please answer Question No. 3.
14	
15	Question No. 2: Was Officer Michael Bell's use of excessive force a cause of
16	injury, damage, or harm to Edgar Solis?
17	
18	YES NO
19	
20	PART II: DEFENDANT OFFICER MICHAEL BELL LIABILITY
21	BATTERY BY A POLICE OFFICER CLAIM
22	Question No. 3: Was Officer Bell's use of deadly force necessary to defend
23	human life?
24	
25	YESNO
26	
27	If you answered "Yes" to Question No. 3, please answer Question No. 5.
28	If you answered "No" to Question No. 3, please answer Question No. 4
	-10- Case No.: 5:23-cv-00515-HDV-JPF
	COMPETING VERDICT FORMS

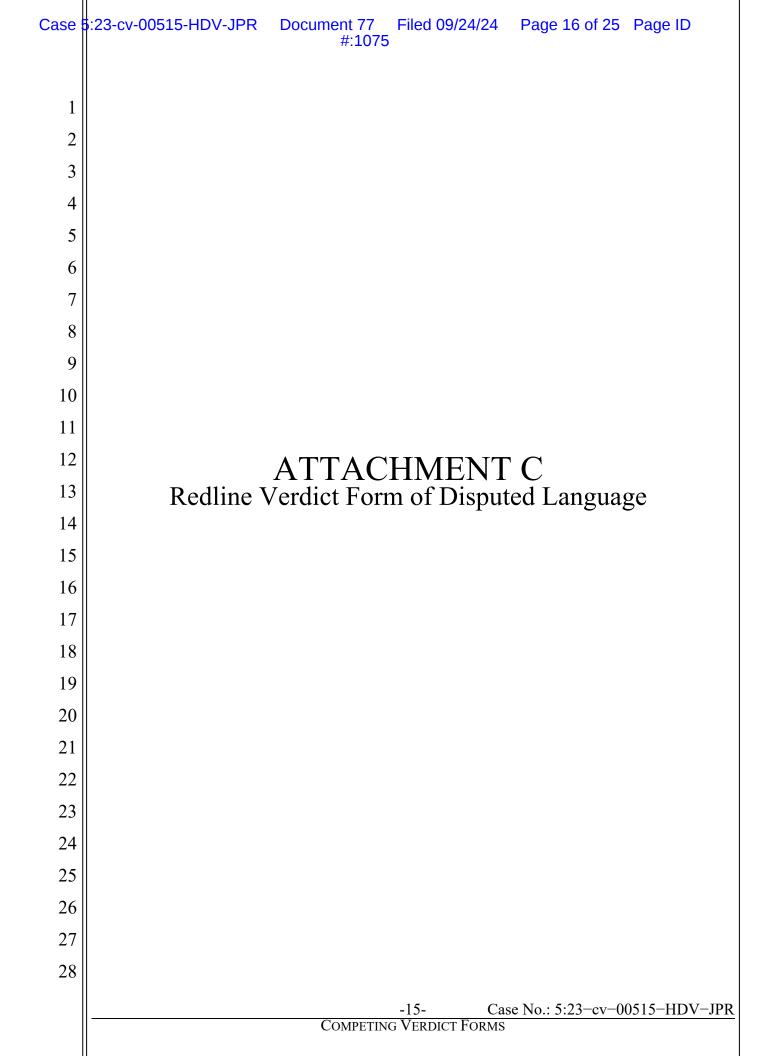
1	Question No. 4: Was Officer Bell's use of deadly force a substantial factor in
2	causing Edgar Solis's injuries.
3	
4	YES NO
5	
6	Please answer Question No. 5.
7	
8	<u>NEGLIGENCE CLAIM</u>
9	Question No. 5: Was Officer Michael Bell negligent in his pre-shooting conduct
10	against Edgar Solis?
11	
12	YES NO
13	
14	If you answered "Yes" to Question No. 3, please answer Question No. 6.
15	If you answered "No" to Question No. 5, but "Yes" as to Question No. 2,
16	please proceed to answer Question No. 14.
17	If you answered "No" in Question No. 2, and "Yes" to Question No. 3 and
18	"No" to Question No. 5, please sign and date the verdict form and return it to the
19	Court.
20	
21	Question No. 6: Was Officer Michael Bell's pre-shooting negligence a cause of
22	injury, damage, or harm to Edgar Solis?
23	
24	YES NO
25	
26	If you answered "Yes" in Question No. 6, please answer Question No. 7.
27	
28	
	-11- Case No.: 5:23-cv-00515-HDV-JP
	COMPETING VERDICT FORMS

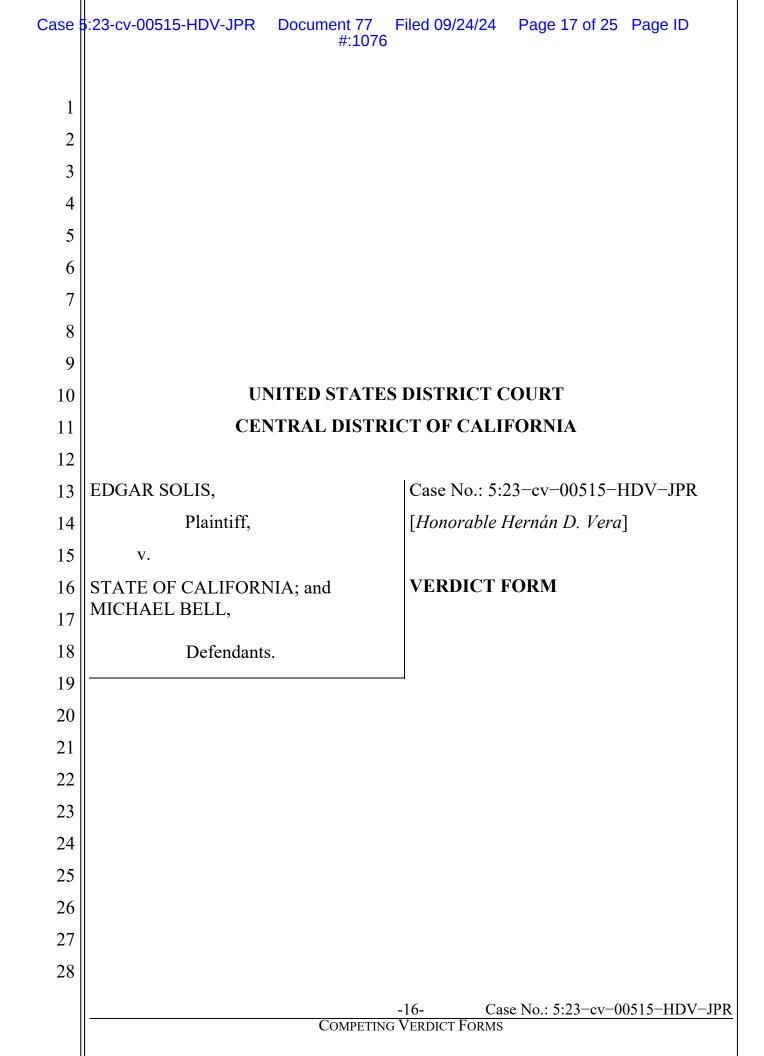
1	Question No. 7: Did Officer Bell act in self-defense?
2	YESNO
3	125110
4	Question No. 8: Did Edgar Solis lawfully resist arrest?
5	
6	YES NO
7 8	Question No. 9: Was Edgar Solis negligent?
9	
10	YES NO
11	
12	If you answered "Yes" to Question No. 9, please answer Question No. 10.
13	If you answered "No" to Question No. 9, please answer Question No. 11.
14	Question No. 10: Was Edgar Solis' negligence a cause of his own injuries?
15	Question 10. 10. Was Eugar Sons negligence a cause of his own injuries:
16	YES NO
17	
18	Question No. 11: What percentage of responsibility for Edgar Solis' injury or
19	harm do you assign to the negligent conduct, if any, of the following?
20	
21	Officer Michael Bell%
22 23	Edgar Solis%
23 24	Deputy Salvator Waltermire%
25	Others (Insert name(s)%
26	
27	(Total must equal 100 %)
28	
	-12- Case No.: 5:23-cv-00515-HDV-JPR

COMPETING VERDICT FORMS

1	THE BANE A	ACT CLAIM
2	Question No. 13: Did the acts of Officer	Bell deprive Edgar Solis of his rights
3	prohibiting the use of excessive for	ce by a law enforcement Officer?
4		
5	YES	NO
6		
7	PART II: PLAINTIFF EDGAR SOLIS'	DAMAGES
8	Question No. 13: What are Edgar Solis'	damages for the following:
9		
10	Past physical pain and suffering:	\$
11		
12	Future physical pain and suffering:	\$
13		
14	Past mental pain and suffering:	\$
15		
16	Future mental pain and suffering:	\$
17		
18	If your answer to Question 12 was "	Yes," please answer Question 14. If you
19	answered "No" to Question 12, please skip	to the end, and sign and date the verdict
20	form.	
21		
22	Question No. 14: Did Officer Michael Be	ell act with malice, oppression, or in
23	reckless disregard of Edgar Solis'	rights?
24		
25	YES	NO
26		
27	Please sign and date the verdict form and r	return it to the Court.
28		
	-1	3- Case No.: 5:23-cv-00515-HDV-JPR
	COMPETING V	

Case	3:23-cv-00515-HDV-JPR	Document 77 Filed 09/24/24 #:1074	Page 15 of 25	Page ID
1	Date:			
2		Jury Foreperson		
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		-14- Cas Competing Verdict Forms	se No.: 5:23-cv-00)515–HDV–JPR





1	JOINT AGREED UPON VERDICT FORM
2	We, the jury in the above-entitled action, find the following:
3	
4	PART I: DEFENDANT OFFICER MICHAEL BELL LIABILITY
5	FOURTH AMENDMENT EXCESSIVE FORCE & BATTERY CLAIMS
6	Question No. 1: <u>Did the acts of Officer Bell deprive Edgar Solis of his rights</u>
7	under the United States Constitution prohibiting an unreasonable
8	seizure Did Officer Michael Bell use excessive or unreasonable force
9	against Edgar Solis?
10	
11	YES NO
12	
13	If you answered "Yes" to Question No. 1, please answer Question No. 2.
14	If you answered "No" to Question No. 1, please answer Question No. 3.
15	
16	Question No. 2: Was Officer Michael Bell's use of force a cause of injury,
17	damage, or harm to Edgar Solis?
18	
19	YES NO
20	
21	Please answer Question No. 3.
22	
23	PART II: DEFENDANT OFFICER MICHAEL BELL LIABILITY
24	BATTERY BY A POLICE OFFICER CLAIM
25	Question No. 3: Was Officer Bell's use of deadly force necessary to defend
26	<u>human life?</u>
27	
28	<u>YES</u> <u>NO</u>
	17 Case No · 5·23-cy-00515-HDV-IDI

COMPETING VERDICT FORMS

Document 77

Filed 09/24/24 Page 19 of 25 Page ID

Case \$:23-cv-00515-HDV-JPR

1	Question No. 46: Was Officer Michael Bell's pre-shooting negligence a cause of
2	injury, damage, or harm to Edgar Solis Was Officer Michael Bell's
3	negligence a cause of injury, damage, or harm to Edgar Solis?
4	
5	YES NO
6	
7	If you answered "Yes" in Question No. 6, please answer Question No. 7.
8	If you answered "Yes" in Question No. 4, please answer Question No. 5.
9	If you answered "No" to Question No. 4, but "Yes" as to Question No. 2,
10	please proceed to answer Question No. 8.
11	If you answered "No" in Question No. 2, and Question No. 4, please sign and
12	date the verdict form and return it to the Court.
13	
14	Question No. 7: Did Officer Bell act in self-defense?
15	YES NO
16	
17	Question No. 8: Did Edgar Solis lawfully resist arrest?
18	
19	YES NO
20	
21	Question No. 59: Was Edgar Solis negligent?
22	
23	YES NO
24	
25	If you answered "Yes" to Question No. $\frac{59}{9}$, please answer Question No. $\frac{610}{9}$.
26	If you answered "No" to Question No. $\frac{59}{2}$, please answer Question No. $\frac{811}{2}$.
27	
28	Question No. 610: Was Edgar Solis' negligence a cause of his own injuries?
	-19- Case No.: 5:23-cv-00515-HDV-JPR COMPETING VERDICT FORMS
	COMPETING VERDICI PORMS

Document 77

Filed 09/24/24 Page 21 of 25 Page ID

Case \$:23-cv-00515-HDV-JPR

Case	3:23-cv-00515-HDV-JPR Document 77 Filed 09/24/24 Page 22 of 25 Page ID #:1081
1	
2	Future physical pain and suffering: \$
3	Future physical pain and suffering: \$
4	Past mental pain and suffering: \$
5	Past mental pain and suffering: \$
6	Future mental pain and suffering: \$
7	
8	If your answer to Question 12 was "Yes," please answer Question 14. If you
9	answered "No" to Question 12, please skip to the end, and sign and date the verdict
10	<u>form</u> Please answer Question No. 10.
11	Question No. 10: Did Officer Michael Bell act with malice, oppression, or in
12	reckless disregard of Edgar Solis' rights?
13	
14	YES NO
15	
16	
17	
18	
19	Please sign and date the verdict form and return it to the Court.
20	
21	
22	Date:
23	Jury Foreperson
24	
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	-21- Case No.: 5:23-cv-00515-HDV-JPR
	COMPETING VERDICT FORMS

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ATTACHMENT D Plaintiff's Position

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Plaintiff's well thought out proposed verdict form is far better suited for this matter as it uses clear language, avoids confusion, and avoids an inconsistent verdict. Plaintiff contends that there should be only one question on the verdict form for the Excessive Force and Battery Claims, in order to avoid an inconsistent verdict. "Claims of excessive force under California law are analyzed under the same standard of objective reasonableness used in Fourth Amendment claims." Hayes v. Cnty. of San Diego, 736 F.3d 1223, 1232 (9th Cir. 2013) (citing In re Joseph F., 85 Cal. App. 4th 975, 989 (2000); Edson v. City of Anaheim, 63 Cal.App.4th 1269, 1274 (1998) (noting that 42 U.S.C. §1983 is "the federal counterpart of state battery"); Brown v. Ransweiler, 171 Cal.App.4th 516, 527 n. 11 (2009) ("Because federal civil rights claims of excessive use of force are the federal counterpart to state battery and wrongful death claims, federal cases are instructive in this area.").) But negligence claims apply a similar but more forgiving standard that considers defendants' conduct leading up to the use of force. Hayes v. County of San Diego, 57 Cal.4th 622, 639 (2013). In other words, pre-shooting circumstances might show that an otherwise reasonable use of deadly force was in fact unreasonable." Id. at 629-30; see also Tabares v. City of Huntington Beach, 988 F.3d 1119, 1125 (9th Cir. 2021) ("the officer's pre-shooting decisions can render his behavior unreasonable under the totality of the circumstances, even if his use of deadly force at the moment of the shooting might be reasonable in isolation.").

Plaintiff version of question one is also more appropriate as it uses the language of "excessive force" with reference to the §1983 claim and "unreasonable force" as used in the Battery instruction.

Plaintiff objects to Defendants proposed battery questions as it implies and incomplete statement of the law. Battery requires immediacy in addition to being necessary to defend human life.

Plaintiff objects to Defendants proposed negligence question as it is an attempt to limit Plaintiff's theory of negligence to only pre-shooting conduct.

Rather, here, Defendant Bell is negligent for his unreasonable use of deadly force as explained in CACI 441. Additionally, Defendant Bell could be also or alternatively found negligent for his pre-shooting conduct.

Plaintiff objects to Defendants proposed Questions 7 and 8, which correspond

Plaintiff objects to Defendants proposed Questions 7 and 8, which correspond to no model instructions, but only to Defendants' unfairly prejudicial alternative instructions. These are prejudicial and improper questions for the verdict form.

Plaintiff objects to Defendants proposed Question 11 with the addition of the negligent conduct of Deputy Waltermire and some unidentified "Others" for the distribution of responsibility. This matter is only about Defendants' wrongful conduct. Further, there is no apportionment of damages related to Plaintiff's claims for Excessive Force, Battery, or violation of the Bane Act, and damages on the verdict form are not being proposed as separate claim for relief. Apportionment, in general, is unnecessary, especially as to the conduct of non-partes. This is a distraction to the jury from the main issues in this matter and risks several mini trials within this trial that will consume unnecessary time and resources, confuse the issues, and mislead the jury. Fed. R. Evid. 403.

Finally, Plaintiff proposed Bane Act question is clear and avoids confusion.

1	ATTACHMENT E
2	Defendants' Position
3	
4	1. Question No. 1: Did Officer Michael Bell use excessive or unreasonable
5	force against Edgar Solis?
6	
7	This question conflates the elements of two separate Federal and State causes
8	of action.
9	
10	2. Question No. 3: Was Officer Michael Bell negligent in his conduct
11	against Edgar Solis?
12	
13	This question does not restrict the scope of Officer Bell's negligence to pre-
14	shooting conduct.
15	
16	3. Question No. 7: What percentage of responsibility for Edgar Solis'
17	injury or harm do you assign to the negligent conduct, if any, of the following?
18	
19	Officer Michael Bell %
20	Edgar Solis %
21	(Total must equal 100 %)
22	
23	This question does not allow the jury to find that any third party was also
24	responsible for plaintiff's harm.
25	
26	
27	
28	
	-24- Case No.: 5:23-cv-00515-HDV-JPR